

Day 1: Dispute Resolution Process in Asia

Session II: Dispute Resolution Process in Asia: Theory and Reality (2) "Labor Dispute Settlement in the Philippines"

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SESSION II

Dispute Resolution Process in Asia: Theory and Reality (2)

LABOR DISPUTE SETTLEMENT IN THE PHILIPPINES

by

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Abstract

I. Policy Considerations – Method of Dispute Settlement

- A. The preferential use of voluntary means of dispute settlement is an avowed policy of the State. Every effort is exerted by the law to foster and implement the practice of voluntarism in the firm belief that real and lasting industrial peace cannot be achieved by legal compulsion but must essentially rest on a voluntary basis.
- B. Compulsory arbitration as a method of dispute settlement is very limited and used only in one instance – only “where there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest. Even so, “before or at any stage of the compulsory arbitration process, the parties may opt to submit their dispute to voluntary arbitration.

II. Machinery for Dispute Settlement

It is the policy of the state to provide both administrative and judicial mechanisms for the adequate resolution of labor disputes. These mechanisms consists of:

- 1. Appellate Courts of the Judicial System;
- 2. Government Agencies or Administrative Tribunals exercising quasi-judicial functions; and
- 3. The law encourages the parties, and fosters the use of voluntary arbitration as a preferred means or procedure of dispute settlement.

III. Speedy Justice – To Achieve the Policy of Speedy Settlement

- 1. Administrative Tribunals exercising quasi-judicial functions are enjoined to “use every and all available means to ascertain the facts in each case speedily and objectively, without regard to the technicalities of law or procedure”, and “the rules of evidence prevailing in courts of law and equity shall not be controlling”.

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2. The period provided in the law within which labor disputes must be reserved are considered as mandatory.

IV. The System

A review of history shows that the country's policy has moved from active Government intervention to one of minimum intervention in the policy of method of dispute settlement.

By and large, the system has been accepted and works well considering the present state of the labor movement; worker awareness of rights, employer practices; and the trust and confidence of the private parties in government. There is, however, a noticeable delay in settlement of labor disputes due to the slow process in the workings of government agencies; of law, the system of voluntary arbitration has gained growing acceptance and may be the wave of the future.

I. Constitutional and Statutory Policy Statements on Methods of Dispute Settlement

A. Constitution of the Philippines

1. Voluntarism as preferred method

Article XIII, Social Justice and Human Rights.

Sec. 3. ...

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling, disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

2. Due process requirements – Constitution – Article III – Bill of Rights

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

B. Statutory – Labor Code of the Philippines

P.D. NO. 442, AS AMENDED. (Referred below as Labor Code)

1. Voluntarism and exception

1.1 Voluntarism

Art. 211. Declaration of Policy. - A. It is the policy of the State: ...

- (a) to promote and emphasize the primacy of free collective bargaining and negotiations, including voluntary arbitration, mediation and conciliation, as modes of settling labor or industrial disputes. ...
- (b) to encourage a truly democratic method of regulating the relations between the employers and employees by means of agreements freely entered into through collective bargaining, no court or administrative agency or official shall have the power to set or fix wages, rates of pay, hours of work or other terms and conditions of employment, except as otherwise provided under this Code.

1.2 Exception to General Rule - Compulsory Method - Compulsory Arbitration

Art. 263 (g), Strikes, Picketing and Lockout

...

(g) When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure the compliance with this provision as well as with such orders as he may issue to enforce the same.

In line, with the national concerns or and the highest respect accorded to the right of patients to life, strikes and lockouts in hospitals, clinics and similar medical institutions shall, to every extent possible, be avoided, and all serious efforts, not only by labor and management but government as well, be exhausted to substantially minimize, if not prevent, their adverse effects on such life and health, through the exercise, however legitimate, by labor of its right to strike, and by management to lockout. ... In such cases, therefore, the Secretary of Labor and Employment may immediately assume, within twenty four (24) hours from knowledge of the occurrence of such a strike or lockout, jurisdiction over the same or certify it to the Commission for compulsory arbitration. For this purpose, the contending parties are strictly enjoined to comply with such orders, prohibitions and/or injunctions as are issued by the Secretary of Labor and Employment or the Commission, under pain of

immediate disciplinary action, including dismissal or loss of employment status or payment by the locking-out employer of backwages, damages and other affirmative relief, even criminal prosecution against either or both of them.

The foregoing notwithstanding, the President of the Philippines shall not be precluded from determining the industries that, in his opinion, are indispensable to the national interest, and from intervening at any time and assuming jurisdiction over such labor dispute in order to settle or terminate the same.

Art. 263 (h), (Option)

(h) Before or at any state of the compulsory arbitration process, the parties may opt to submit their dispute to voluntary arbitration.

Art. 221, ... Prior Resort to Amicable Settlement

...

Any provision of law to the contrary notwithstanding, the Labor Arbiter shall exert all efforts towards the amicable settlement of a labor dispute within his jurisdiction on or before the first hearing. The same rule shall apply to the commission in the exercise of its original jurisdiction.

2. Speedy Labor Justice

2.1 Procedural Rules

Art. 221. Technical Rules not binding and prior resort to amicable settlement. -

In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process. In any proceeding before the Commission or any Labor Arbiter, the parties may be represented by legal counsel but it shall be the duty of the Chairman, any Presiding Commissioner or Commissioner or any Labor Arbiter to exercise complete control of the proceedings at all stages.

2.2 Time Periods

Art. 277 (I) Miscellaneous Provisions

(i) To ensure speedy labor justice, the periods provided in this Code - within which decisions or resolutions of labor relations cases or matters should be rendered shall be mandatory. For this purpose, a case or matter shall be deemed submitted for decision or resolution upon the filing of the pleading or memorandum required by the rules of the Commission or by Commission

itself, or the Labor Arbiter, or the Director of the Bureau of Labor Relations or Med-Arbiter, or the Regional Director.

Upon, expiration of the corresponding period, a certification at why a decision or resolution has not been rendered within the said period be issued forthwith by the Chairman of the Commission, the Executive Arbiter, or the Director of the Bureau of Labor Relations or Med-Arbiter,

2.3 Appearances Non-Lawyers

Art. 222. Appearance and Fees. – (a) Non lawyers may appear before the Commission or any labor arbiter only:

1. if they represent themselves; or
2. if they represent their organization or members thereof.

3. Machinery Dispute Settlement

Art. 211. Declaration of Policy. - A. It is the policy of the State: ...

(e) To provide an adequate administrative machinery for the expeditious settlement of labor or industrial disputes;

II. Dispute Settlement Agencies

I. Agencies of the Judicial Branch of Government – Judicial Review – Appellate

A. Supreme Court of the Philippines

1. Composition – Article VIII, Judicial Department - Section 4(1), Constitution of the Philippines

Sec. 4. (1) The Supreme Court shall be composed of a Chief Justice and Fourteen Associate Justices. It may sit *en banc* or in its discretion, in divisions of three, five, or seven Members. Any vacancy shall be filled within ninety days from the occurrence thereof.

2. Qualification – Article VIII, Judicial Department - Section 7 (1), Constitution of the Philippines

Sec. 7. (1) No person shall be appointed Member of the Supreme Court or any lower collegiate court unless he is a natural born citizen of the Philippines. A Member of the Supreme Court must be at least forty years of age, and must have been for fifteen years or more a judge of a lower court or engaged in the practice of law in the Philippines.

3. Appellate Function — Article VIII, Judicial Department - Section 5(1), Constitution of the Philippines

Sec. 5. The Supreme Court shall have the following powers:

(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus.

B. Court of Appeals – Batas Pambansa Blg. 129

1. Composition

Sec. 1. Section 3, Chapter 1 of Batas Pambansa Blg. 129, as amended, is hereby further amended to read as follows:

Sec. 3. Organization. – There is hereby created a Court of Appeals which shall consist of a Presiding Justice and sixty-eight (68) Associate Justices who shall be appointed by the President of the Philippines.

2. Qualification

Section 7. Qualifications. – The Presiding Appellate Justice and the Associate Appellate Justices shall have the same qualifications as those provided in the Constitution for Justices of the Supreme Court.

3. Jurisdiction

Section 9. Jurisdiction. - The Intermediate Appellate court shall exercise:

... Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions, except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1998.

C. Agencies of the Executive Department Exercising Quasi-Judicial Functions

1. President of the Philippines

Determination of industries indispensable to the national interest and power of compulsory arbitration

Article 263 (g) – Labor Code

The foregoing notwithstanding, the President of the Philippines shall not be precluded from determining the industries that, in his opinion, are indispensable to the national interest, and from intervening at any time and assuming jurisdiction over any labor dispute in such industries in order to settle or terminate the same.

2. The Secretary of the Department of Labor and Employment

2.1 Certification for/or exercise of compulsory arbitration powers over labor disputes in industries indispensable to the national interest

Art. 263 (g), Labor Code

(g) When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration.

In line with the national concern for and the highest respect accorded to the right of patients to life and health, strikes and lockouts in hospitals, clinics and similar medical institutions shall, to every extent possible, be avoided, and all serious efforts, not only by labor and management but government as well, be exhausted to substantially minimize, if not prevent their adverse effects on such life and health, through the exercise, however legitimate, by labor of its right to strike and by management to lockout. In such cases therefore, the Secretary of Labor and Employment may immediately assume, within twenty four (24) hours from knowledge of the occurrence of such a strike or lockout, jurisdiction over the same or certify it to the Commission for compulsory arbitration.

2.2 Appellate jurisdiction decisions of Med-Arbiters in certification election cases

Article 259. Appeal from Certification Election Orders. – Any party to an election may appeal the order or results of the election as determined by the Med-Arbiter directly to the Secretary of Labor and Employment on the ground that the rules and regulations or parts thereof established by the Secretary of Labor and Employment for the conduct of the election have been violated. Such appeal shall be decided within fifteen (15) calendar days .

D. Regional Bureaus and Offices in the Department of Labor and Employment

3.1 Regional Director – DOLE

Recovery of wages, simple money claims and other benefits

Article 129. Recovery of Wages, Simple Money Claims and Other Benefits.

- Upon complaint of any interested party, the Regional Director of the Department of Labor and Employment or any of the duly authorized hearing officers of the Department is empowered, through summary proceedings and after due notice, to hear and decide any matter involving the recovery of wages and other monetary claims and benefits, including legal interest, owing to an employee or person employed in domestic or household service or househelper under this Code, arising from employer- employee relations. Provided, That such complaint does not include a claim for reinstatement: Provided, further, That the aggregate money claims of each employee or househelper do not exceed Five thousand pesos (P5,000.00). The Regional Director or hearing officer shall decide or resolve the complaint within thirty (30) calendar days from the date of the filing of the same.

Any decision or resolution of the Regional Director or hearing officer pursuant to this provision may be appealed on the same grounds provided in Article 223 of this Code, within five (5) calendar days from receipt of a copy of said decision or resolution, to the National Labor Relations Commission which shall resolve the appeal within ten (10) calendar days from the submission of the last pleading required or allowed under its rules.

3.2 Bureau of Labor Relations

a) Inter-union and intra-union conflicts and disputes, grievances or problems affecting labor-management

Article 226. Bureau of Labor Relations. - The Bureau of Labor Relations and the Labor Relations Divisions in the regional offices of the Department of Labor and Employment shall have original and exclusive authority to act, at their own initiative or upon request of either or both parties, on all inter-union and intra-union conflicts, and all disputes, grievances or problems arising from or affecting labor- management relations in all workplaces whether agricultural or non-agricultural, except those arising from the implementation or interpretation of collective bargaining agreements which shall be the subject of grievance procedure and/ or voluntary arbitration.

b) Qualifications of Med-Arbiter

Education - Bachelor of Laws,

Experience - 4 years relevant experience, RA 1080

Training - 24 hours of relevant training

(Source: Bureau of Labor Relations. See also letter of Chairman, Civil Service Commission to Secretary, Department of Labor and Employment, November 25, 1994)

E. Offices-Agencies Attached to the Department of Labor and Employment

1. National Labor Relations Commission and Labor Arbiters

1.1 National Labor Relations Commission – attached to the Department of Labor and Employment

a. Composition

Article 213. National Labor Relations Commission. - There shall be a National Labor Relations Commission which shall be attached to the Department of Labor and Employment for program and policy coordination only, composed of a Chairman and fourteen (14) Members.

Five (5) members each shall be chosen from among the nominees of the workers and employers organizations, respectively. The Chairman and the four (4) remaining members shall come from the public sector, with the latter to be chosen from among the recommendees of the Secretary of Labor and Employment.

Upon assumption into office, the members nominated by the workers and employers organizations shall divest themselves of any affiliation with or interest in the federation or association to which they belong.

The Commission may sit *en banc* or in five (5) divisions, each composed of three (3) members. Subject to the penultimate sentence of this paragraph, the Commission shall sit *en banc* only for purposes of promulgating rules and regulations governing the hearing and disposition of cases before any of its divisions and regional branches and formulating policies affecting its administration and operations. The Commission shall exercise its adjudicatory and all other powers, functions and duties through its divisions. Of the five (5) divisions, the first, second and third divisions shall handle cases coming from the National Capital Region and other parts of Luzon; and the fourth and fifth divisions, cases from the Visayas and Mindanao, respectively: Provided, That the Commission sitting *en banc* may, on temporary or emergency basis, allow cases within the jurisdiction of any division to be heard and decided by any other division whose docket allows the additional workload and such transfer will not expose litigants to unnecessary additional expense. The divisions of the Commission shall have exclusive appellate jurisdiction over cases within their respective territorial jurisdiction.

The concurrence of two (2) Commissioners of a division shall be necessary for the pronouncement of judgment or resolution. Whenever the required membership in a division is not complete and the concurrence of two (2) Commissioners to arrive at a judgment or resolution cannot be obtained, the Chairman shall designate such number of additional Commissioners from the other divisions as may be necessary.

The conclusions of a division on any case submitted to it for decision shall be reached in consultation before the case is assigned to a member for the

writing of the opinion. It shall be mandatory for the division to meet for purposes of the consultation ordained herein. A certification to this effect signed by the Presiding Commissioner of the division shall be issued, and a copy thereof attached to the record of the case and served upon the parties.

The Chairman shall be the Presiding Commissioner of the first division, and the four (4) other members from the public sector shall be the Presiding Commissioners of the second, third, fourth and fifth divisions, respectively. In case of the effective absence or incapacity of the Chairman, the Presiding Commissioner of the second division shall be the Acting Chairman.

b. Qualification

Article 215. Appointment and Qualifications. - The Chairman and other Commissioners shall be members of the Philippine Bar and must have been engaged in the practice of law in the Philippines for at least fifteen (15) years, with at least five (5) years experience or exposure in the field of labor-management relations and shall preferably be residents of the region where they are to hold office. ...

The chairman and the other Commissioners, . . . shall hold office during good behavior until they reach the age of sixty-five (65) years, unless sooner removed for cause as provided by law or become incapacitated to discharge the duties of their office.

c. Jurisdiction

1) Appellate

Art. 217. Jurisdiction ... and the Commission. - ... (b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.

2) Original Jurisdiction - Labor Injunction

Art. 218. Powers of the Commission. -

(e) To enjoin or restrain any actual or threatened commission of any prohibited or unlawful acts or to require the performance of a particular act in any labor dispute which, if not restrained or performed forthwith, may cause grave or irreparable damage to any party or render ineffectual any decision in favor of such party: Provided, That no temporary or permanent injunction in any case involving or growing out of a labor dispute as defined in this Code shall be issued except after hearing the testimony of witnesses with opportunity for cross-examination, in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and only after a finding of fact by the Commission, to the effect:

(1) That prohibited or unlawful acts have been threatened and will be committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat, prohibited or unlawful act, except against the person or persons, association or organization making the threat or committing the prohibited or unlawful act or actually authorizing or ratifying the same after actual knowledge thereof,

(2) That substantial and irreparable injury to complainant's property will follow;

(3) That as to each item of relief to be granted, greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief,

(4) That complainant has no adequate remedy at law; and

(5) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

2) Wage Distortion

Article 124. Standard Criteria for Minimum Wage Fixing. – xxx Where the application of any prescribed wage increase by virtue of a law or Wage Order issued by any Regional Board results in distortions of the wage structure within an establishment issue.

In cases where there are no collective agreements or recognized labor unions, the employers and workers shall endeavor to correct such distortions. Any dispute arising therefrom shall be settled through the National Conciliation and Mediation Board and, if it remains unresolved after ten (10) calendar days of conciliation, shall be referred to the appropriate branch of the National Labor Relations Commission (NLRC). It shall be mandatory for the NLRC to conduct continuous hearings and decide the dispute within twenty (20) calendar days from the time said dispute is submitted for compulsory arbitration.

1.2 Labor Arbiter

a. Qualifications

Art. 215. Appointment and Qualification. - ... The Executive Labor Arbiters and Labor Arbiters shall likewise be members of the Philippine Bar and must have been engaged in the practice of law in the Philippines for at least seven (7) years, with at least three (3) years experience or exposure in the field of labor management relations: Provided, however, that incumbent Executive Labor Arbiters and Labor Arbiters who have been engaged in the practice of law for at least five (5) years may be considered as already qualified for purposes of reappointment as such under this Act.

b. Jurisdiction

Art. 217. Jurisdiction of Labor Arbiters ... – (a) Except otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

1. Unfair labor practice cases;
2. Termination disputes;
3. If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;

4. Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;
5. Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts; and
6. Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims, arising from employer- employee relations, including those of persons in domestic or household service, involving an amount exceeding Five thousand pesos (P5,000.00), regardless of whether accompanied with a claim for reinstatement or not.

SECTION 10 of R.A. No. 8042. Money Claims. Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer- employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages.

2. National Conciliation and Mediation Board

Executive Order No. 126. Reorganizing the Ministry of Labor and Employment – January 1987

2.1 Composition

Section 22. National Conciliation and Mediation Board. - A National Conciliation and Mediation Board, herein referred to as the “Board”, is hereby created and which shall absorb the conciliation, mediation and voluntary arbitration functions of the Bureau of Labor Relations in accordance with Section 29 (c) hereof. The Board shall be composed of an Administrator and two (2) Deputy Administrators. It shall be an attached agency under the administrative supervision of the Minister of Labor and Employment.

The Administrator and the Deputy Administrators shall be appointed by the President upon recommendation of the Minister of Labor and Employment. There shall be as many Conciliators-Mediators as the needs of the public service require, who shall have at least three (3) years of experience in handling labor relations and who shall be appointed by the President upon recommendation of the Minister.

2.2 Qualifications of Conciliator-Mediator - (Source: National Conciliation and Mediation Board)

Essentially, Conciliators-Mediators must have the following qualifications:

- a) Bachelor’s Degree relevant to the job
- b) Four (4) years relevant experience
- c) Twenty four (24) hours relevant training

- d) Civil Service Eligible for Professionals or appropriate Eligibility for Second Legal Position

2.3 Function

The Board shall have the following functions:

- (a) Formulate policies, programs, standards, procedures, manuals of operation and guidelines pertaining to effective mediation and conciliation of labor disputes;
- (b) Perform preventive mediation and conciliation functions;

III. Non-Governmental or Private Agency Voluntarily Set-up by Labor and Management – Voluntary Arbitrator or Panel of Voluntary Arbitrators

1. Qualification

(Revised Guidelines in the Accreditation and De-listing of Voluntary Arbitrators, Department of Labor and Employment, November 15, 1999)

Accreditation of an individual as voluntary arbitrator shall be subject to the condition that he/she meets all the qualifications prescribed by the NCMB for accreditation. If found qualified, accreditation which is renewable every five (5) years, shall be granted.

Minimum Criteria

To qualify as an Accredited Voluntary Arbitrator, a person must possess the minimum criteria for accreditation, as follows:

- 1.1 He/she must be a Filipino citizen residing in the Philippines.
- 1.2 He/she must be a holder of at least a Bachelor's Degree preferably relevant to Labor and Social Relations, Economics and related fields of study.
- 1.3 He/she must have at least five (5) years experience in the field of Labor Management relations.
- 1.4 He/she has no pending criminal case involving moral turpitude.

2. Jurisdiction

2.1 Original and Exclusive

Article 261. Jurisdiction of Voluntary Arbitrator or Panel of Voluntary Arbitrators. - The Voluntary Arbitrator or panel of Voluntary Arbitrators shall have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies referred to in the immediately preceding article. Accordingly, violations of a Collective Bargaining Agreement, except those which are gross in character, shall no longer be

treated as unfair labor practice and shall be resolved as grievances under the Collective Bargaining Agreement. For purposes of this article, gross violations of Collective Bargaining Agreement shall mean flagrant and/or malicious refusal to comply with the economic provisions of such agreement.

The Commission, its Regional Offices and the Regional Directors of the Department of Labor and Employment shall not entertain disputes, grievances or matters under the exclusive and original jurisdiction of the Voluntary Arbitrator or panel of Voluntary Arbitrators and shall immediately dispose and refer the same to the Grievance Machinery or Voluntary Arbitration provided in the Collective Bargaining Agreement.

2.2 By Agreement of Labor and Management

Article 262. Jurisdiction over other Labor Disputes. - The Voluntary Arbitrator or panel of Voluntary Arbitrators, upon agreement of the parties, shall also hear and decide all other labor disputes including unfair labor practices and bargaining deadlocks.

Article 124. ... Minimum Wage Fixing.

...

Where the application of any prescribed wage increase by virtue of a law or wage order issued by any Regional Board results in distortions of the wage structure within an establishment, the employer and the union shall negotiate to correct the distortions any disputes arising from wage distortions shall be resolved through the grievance procedure under their collective bargaining agreement and, if it remains unresolved, through voluntary arbitration ...

IV. Dispute Settlement Agency: Public Sector or Government Sector – (Executive Order No. 180, 1987)

1. Composition

Section 15. A Public Sector Labor Management Council, hereinafter referred to as the Council, is hereby constituted to be composed of the following:

- 1) Chairman, Civil Service Commission - Chairman
- 2) Secretary, Department of Labor and Employment - Vice-Chairman
- 3) Secretary, Department of Finance - Member
- 4) Secretary, Department of Justice - Member
- 5) Secretary, Department of Budget and Management - Member

The Council shall implement and administer the provisions of this Executive Order. For this purpose, the Council shall promulgate the necessary rules and regulations to implement this Executive Order.

2. Jurisdiction

Section 16. The Civil Service and labor laws and procedures, whenever

applicable, shall be followed in the resolution of complaints, grievances and cases involving government employees. In case any dispute remains unresolved after exhausting all the available remedies under existing laws and procedures, the parties may jointly refer the dispute to the Council, for appropriate action.

V. Social Legislation Claims Settlement Procedure

A. Employees Compensation and State Insurance Fund

1. Composition

Article 176. Employees Compensation Commission. (a) To initiate, rationalize, and coordinate the policies of the employees' compensation program, the Employees' Compensation Commission is hereby created to be composed of five ex-officio members, namely: the Secretary of Labor and Employment as Chairman, the GSIS General Manager, the SSS Administrator, the Chairman of the Philippine Medical Care Commission, and the Executive Director of the ECC Secretariat, and two appointive Members, one of whom shall represent the employees and the other, the employers, to be appointed by the President of the Philippines for a term of six years. The appointive Member shall have at least five years experience in workmen's compensation or social security programs. All vacancies shall be filled for the unexpired term only.

(b) The Vice Chairman of the Commission shall be alternated each year between the GSIS General Manager and the SSS Administrator. The presence of four members shall constitute a quorum. Each member shall receive a per diem of two hundred pesos for every meeting that is actually attended by him, exclusive of actual, ordinary and necessary travel and representation expenses. In his absence, any member may designate all official of tile institution lie serves on full-time basis is his representative to act in his behalf.

(d) The Commission shall have the status and category of a government corporation, and it is hereby deemed attached to the Department of Labor and Employment for policy coordination and guidance.

2. Claims Procedure

Article 180. Settlement of Claims. - The System shall have original and exclusive jurisdiction to settle any dispute arising from this Title with respect to coverage, entitlement to benefits, collection and payment of contributions and penalties thereon, or any other matter related thereto, subject to appeal to the Commission, which shall decide appealed cases within twenty (20) working days from the submission of the evidence.

Article 181. Review. - Decisions, orders or resolutions of the Commission may be reviewed on certiorari by the Supreme Court on question of law upon petition of an aggrieved party within ten (10) days from notice thereof.

B. Social Security Act

1. Composition

Section 3. Social Security System.- (a) To carry out the purposes of this Act, the Social Security System, hereinafter referred to as 'SSS', a corporate body, with principal place of business in Metro Manila, Philippines, is hereby created. The SSS shall be directed and controlled by a Social Security Commission, hereinafter referred to as 'Commission', composed of the Secretary of Labor and Employment or his duly designated undersecretary, the SSS president and seven (7) appointive members, three (3) of whom shall represent the workers' group, at least one (1), of whom shall be a woman; three (3) the employers' group, at least one (1) of whom shall be a woman; and one (1), the general public whose representative shall have adequate knowledge and experience regarding social security, to be appointed by the President of the Philippines. The six (6) members representing workers and employers shall be chosen from among the nominees of workers' and employers' organizations, respectively. The Chairman of the Commission shall be designated by the

President of the Philippines from among its members. The term of the appointive members shall be three (3) years: Provided, That the terms of the first six (6) appointive members shall be one (1), two (2) and three (3) years for every two (2) members, respectively: Provided further, That they shall continue to hold office until their successors shall have been appointed and duly qualified. All vacancies, prior to the expiration of the term, shall be filled for the unexpired term only. The appointive members of the Commission shall receive at least two thousand five hundred representation allowances as may be fixed by the Commission, but not to exceed Ten thousand pesos (P10,000.00) a month.

2. Settlement of Claim

Section 5. Settlement of Disputes - a) Any dispute arising under this Act with respect to coverage, benefits contributions and penalties thereon or any other matter related thereto, shall be cognizable by the Commission, and any case filed with respect thereto shall be heard by the Commission, or any of its members, or by hearing officers duly authorized by the Commission and decided within the mandatory period of twenty (20) days after the submission of the evidence. The filing, determination and settlement of disputes shall be governed by the rules and regulations promulgated by the Commission.

b) Appeal to Courts. - Any decision of the Commission, in the absence of an appeal therefrom as herein provided, shall become final and executory fifteen (15) days after the date of notification, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies before the Commission. The Commission shall be deemed to be a party to any judicial action involving any such decision, and may be represented by an attorney employed by the Commission, or when

requested by the Commission, by the Solicitor General or any public prosecutor.

c) Court Review. - The decision of the Commission upon any disputed matter may be reviewed both upon the law and the facts by the Court of Appeals. For the purpose of such review the procedure concerning appeals from the Regional Trial Court shall be followed as far as practicable and consistent with the purposes of this Act. Appeal from a decision of the Commission must be taken within fifteen (15) days from notification of such decision. If the decision of the Commission involves only questions of law, the same shall be reviewed by the Supreme Court. No appeal bond shall be required. The case shall be heard in a summary manner, and shall take precedence over all cases, except that in the Supreme Court, criminal cases wherein life imprisonment or death has been imposed by the trial court shall take precedence. No appeal shall act as *supersedeas* or a stay of the order of the Commission unless the Commission itself, or the Court of Appeals or the Supreme Court, shall so order.

C. Government Service Insurance System (GSIS)

1. Composition

Section 42. The Board of Trustees; its Composition; Tenure and Compensation. - The corporate powers and functions of the GSIS shall be vested in and exercised by the Board Of Trustees composed of the President and General Manager of the GSIS and eight (8) other members to be appointed by the President of the Philippines, one (1) of whom shall be either the President of the Philippine Public School Teachers Association (PPSTA) or the President of the Philippine Association of School Superintendents (PASS), another two (2) shall represent the leading organizations or associations of government employees/retirees, another four (4) from the banking, finance, investment, and insurance sectors, and one (1) recognized member of the legal profession who at the time of appointment is also a member of the GSIS. The Trustees shall elect from among themselves a Chairman while the President and General Manager of the GSIS shall automatically be the vice-chairman.

2. Settlement of Claim

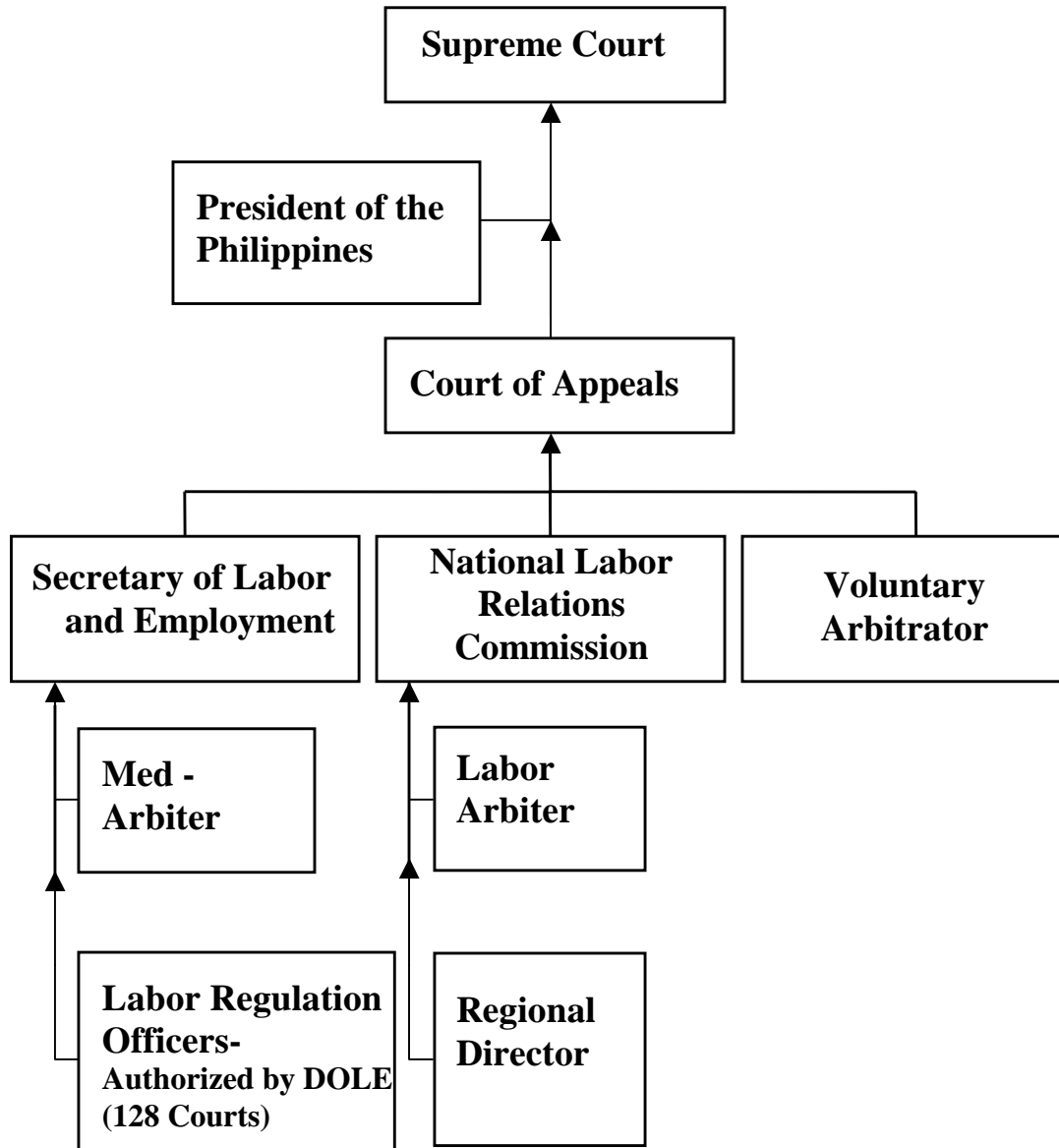
Section 30. Settlement of Disputes. - The GSIS shall have original and exclusive jurisdiction to settle any dispute arising under this Act, and any other laws administered by the GSIS.

The Board may designate any member of the Board, or official of the GSIS who is a lawyer, to act as a hearing officer to receive evidence, make findings of fact and submit recommendations together with all the documentary and testimonial evidence to the Board within thirty (30) working days from the time the parties have closed their respective evidence and file their last pleading. The board shall decide the case within thirty (30) days from the receipt of the hearing officer's findings and recommendations. The cases heard by the Board shall be decided within thirty (30) working days from the time they are submitted by the parties for decision.

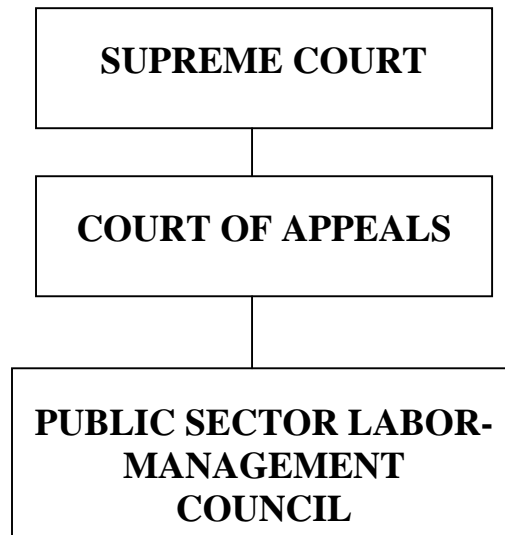
Section 31. Appeals. - Appeals from any decision or award of the Board shall be governed by Rules 43 and 45 of the 1997 Rules of Civil Procedure adopted by the Supreme Court on April 8, 1997 which will take effect on July 1, 1997: Frovided, That pending cases and those filed prior to July 1, 1997 shall be governed by the applicable rules of procedure: Provided, further, That the appeal shall take precedence over all other cases except criminal cases when the penalty of life imprisonment or death or reclusion perpetua is imposable.

The appeal shall not stay die execution of the order or award unless ordered by the Board, by the Court of Appeals or by the Supreme Court and the appeal shall be without prejudice to the special civil action of certiorari when proper.

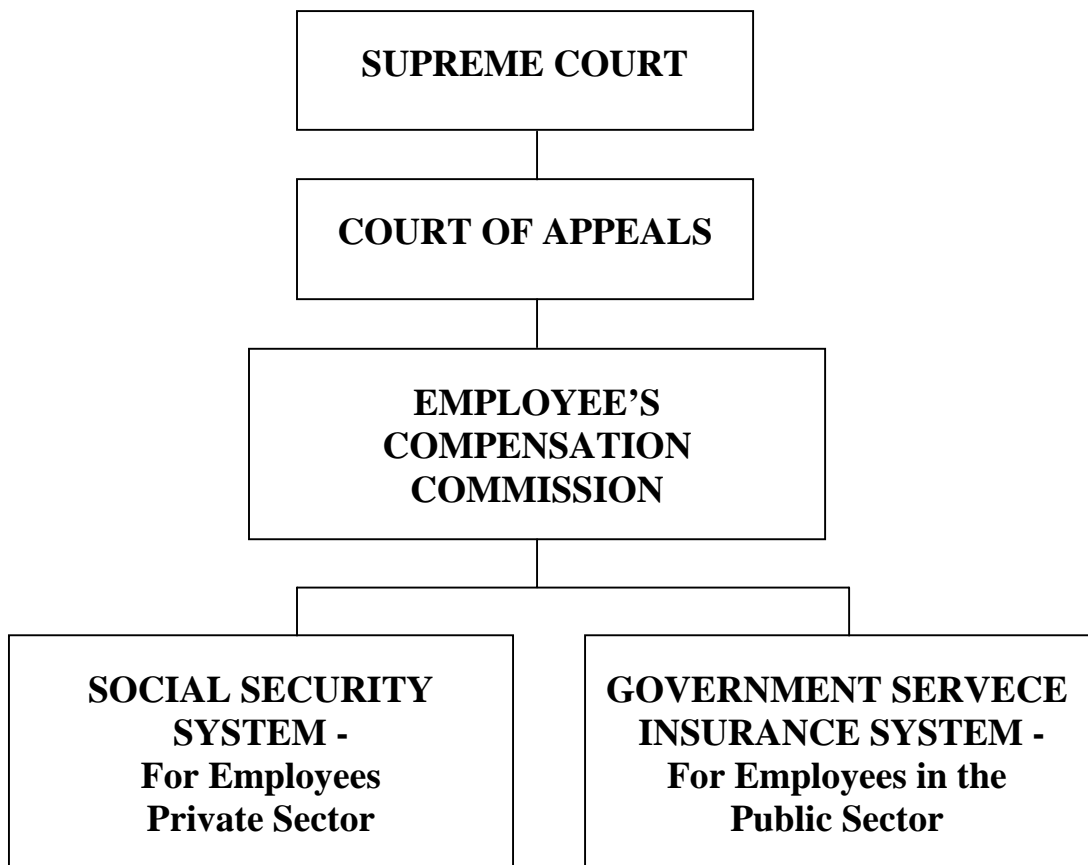
**LABOR DISPUTE SETTLEMENT
PROCESS FLOW CHART -
Labor Standards and Labor Relations Cases**



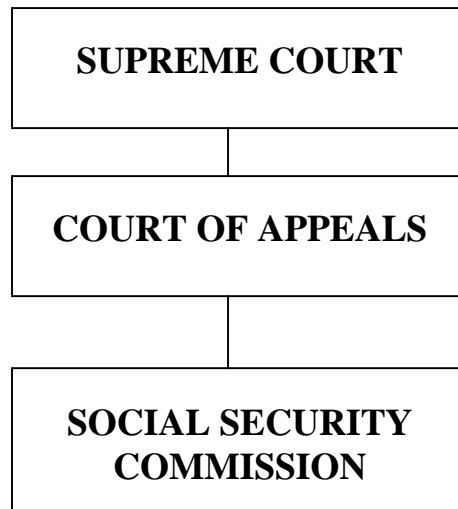
**LABOR DISPUTE SETTLEMENT IN THE
PUBLIC SECTOR OR GOVERNMENT SERVICE
(Executive Order No. 180, June 1, 1997)**



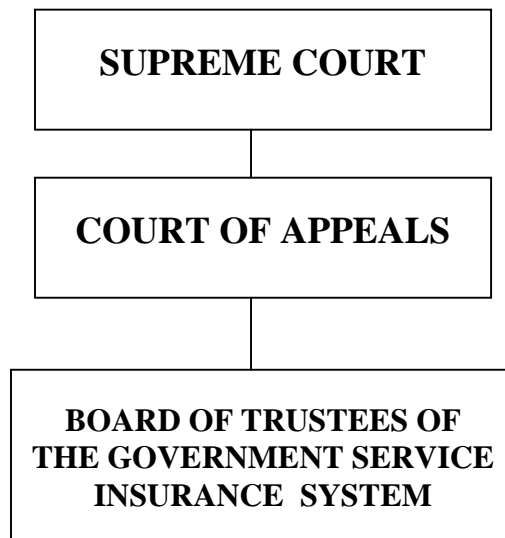
**DISPUTE SETTLEMENT OF WORKMEN'S COMPENSATION CLAIMS:
EMPLOYEES COMPENSATION AND STATE INSURANCE FUND
BOOK IV, LABOR CODE OF THE PHILIPPINES**



**SETTLEMENT OF CLAIMS UNDER
SOCIAL SECURITY LAW OF 1997
(R.A. NO. 1161, As Amended by R.A. No. 8282)**



**SETTLEMENT OF CLAIMS UNDER THE REVISED GOVERNMENT
SERVICE INSURANCE ACT OF 1997
(R.A. No. 8291)**



Notes:

A. Agencies

1. The Supreme Court and the Court of Appeals are integral parts of the Judicial Department of Government. Both courts perform judicial functions as appellate agencies in labor related and social legislation cases.
2. The Secretary of Labor and Employment and the National Labor Relations Commission, are agencies of the Executive Department of government performing quasi-judicial functions either in their original jurisdiction or as appellate agencies. The NLRC is attached to the DOLE for policy coordination purposes.
3. The Voluntary Arbitrator is a non-governmental private entity jointly established by labor and management.
4. National Conciliation and Mediation Board is a governmental agency attached to the DOLE for policy coordination. It is not an adjudicative agency but only assist the parties in dispute resolution.

B. APPEAL PROCEDURE - MODE

1. Appeal to the National Labor Relations Commission

Administrative Appeal under Article 217 (b), P.D. No. 442, as amended, Labor Code of the Philippines

2. Appeal from the Voluntary Arbitrator to the Court of Appeals - Rule 43, Rules of Court of the Philippines
3. Rule 43 - APPEALS FROM THE COURT OF TAX AND QUASI-JUDICIAL AGENCIES TO THE COURT OF APPEALS

Section 1. Scope. - This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction industry Arbitration Commission, and voluntary arbitrators authorized by law. (n)

Sec. 2. Cases not covered. - This Rule shall not apply to judgments or final orders issued under the Labor Code of the Philippines. (n)

Sec. 3. Where to appeal. - An appeal under this Rule may be taken to the Court of Appeals within the period and in the manner herein provided, whether the appeal involves questions of fact, of law, or mixed questions of fact and law.

Sec. 4. Period of appeal. - The appeal shall be taken within fifteen (15) days from notice of the award, judgment.

4. From Court of Appeals to the Supreme Court – *Special civil action of certiorari*, under

Rule 65 of the Rules of Court of the Philippines

5. From the National Labor Relations Commission to the Court of Appeals. – Rule 65, Rules of Court.

See also: *St. Martin Funeral Home v. NLRC*, 295 SCRA 494 (1998)

6. Appeal from the Court of Appeals to the Supreme Court – Rule 65, Rules of Court, Petition for Certiorari.

Rule 65

CERTIORARI, PROHIBITION AND MANDAMUS

Section 1. *Petition for certiorari.* - When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46. (1a)

LABOR DISPUTE SETTLEMENT IN THE PHILIPPINES
NATURE OF DISPUTE AND ADJUDICATING AGENCIES

LABOR STANDARDS AND LABOR RELATIONS
ISSUES: PRIVATE SECTOR

NATURE OF DISPUTE	WHERE COMPLAINT FILED - INITIAL ADJUDICATION	FLOW OF APPEALS
Violation of Apprentice Agreement (65)	Regional Director – DOLE	Secretary – DOLE ——— Court of Appeals ——— Supreme Court
Wage distortion resulting from promulgation of Wage Order by the Regional Tri-partite Wages and Productivity Boards. (123)		National Wages ——— National Labor ——— Court of Appeals ——— Supreme Court And Productivity Relations Commission Commission (123)
Violations which may aid in enforcement of the Labor Code, any Labor Law, Wage Order or Rules and Regulations issued by Agency (128)	No complaint. Violation discovered in course of Visitorial and Enforcement Power of Secretary DOLE or authorized representative	Secretary of Labor ——— Court of Appeals ——— Supreme Court And Employment
Recovery of Wages, Simple Money Claims and Other Benefits. Aggregate money claim of each complainant does not exceed P5,000.00. No claim for Reinstatement (129)	Regional Director – DOLE	National Labor ——— Court of Appeals ——— Supreme Court Relations Commission (129)
Disputes, governing matters arising from interpretation or implementation of the Productivity Incentives Act of 1990 (Sec. 9, R.A. No. 6971)	Labor Management Committee in the establishment with the assistance of the National Conciliation and Mediation Board (NCMB). Voluntary Arbitration (Sec. 9, R.A. No. 6971)	Court of Appeals ——— Supreme Court

NOTE: Numbers refer to Article Number of the Labor Code of the Philippines P.D. No. 447 as amended. Article or Section Numbers in other laws are specifically indicated.
Labor dispute refer to controversies where there exist an employer-employee relationship between the parties.

NATURE OF DISPUTE	WHERE COMPLAINT FILED - INITIAL ADJUDICATION	FLOW OF APPEALS
Violation of the Sexual Harassment Law. (R.A. No. 7877)	<p>Employer created Committee on Decorum to investigate complaint. (Sec. 4, R.A. No. 7877)</p> <p>Victim or complainant may institute separate and independent action for Damages and other relief in Regional Trial Court (RTC) (Sec. 6, R.A. No. 7877)</p> <p>Criminal complaint in Regional Trial Court. (Sec. 7, R.A. No. 7877)</p>	<p style="text-align: center;">Court of Appeals ———— Supreme Court</p>
Unfair labor practices (217(a)(1))	Labor Arbiter (217(a)(1))	National Labor ———— Court of Appeals ———— Supreme Court Relations Commission (217(b))
Termination disputes (217(a)(2))	Labor Arbiter (217(a)(2))	National Labor ———— Court of Appeals ———— Supreme Court Relations Commission (217(b))
Wages, rates of pay, hours of work and other terms and conditions of employment. Complaint accompanied with claim of reinstatement (217(a)(3))	Labor Arbiter (217(a)(3))	National Labor ———— Court of Appeals ———— Supreme Court Relations Commission (217 (b))
Claims for actual, moral, exemplary and other forms of damages (217(a)(4))	Labor Arbiter (217(a)(4))	National Labor ———— Court of Appeals ———— Supreme Court Relations Commission (217(b))

NATURE OF DISPUTE	WHERE COMPLAINT FILED - INITIAL ADJUDICATION	FLOW OF APPEALS
Cases arising from violation of Prohibited Activities in connection with strike or lockout and legality of strike and lockout (217(a)(5) and 264)	Labor Arbiter (217(a)(5))	National Labor Relations Commission (217(b)) — Court of Appeals — Supreme Court
All other claims arising from employer-employee relations where amount of each claim exceed P5,000.00, whether accompanied or not with a claim for reinstatement (217(a)(6))	Labor Arbiter (217(a)(6))	National Labor Relations Commission (217(b)) — Court of Appeals — Supreme Court
Claims arising out of an employer-employee relationship or any law or contract involving Filipino Workers for Overseas Deployment including claims for actual, moral, or exemplary and other forms of damages. (Sec. 10, R.A. No. 8042, Migrant Workers and Overseas Filipinos Act of 1995)	Labor Arbiter (217(b))	National Labor Relations Commission (217(b)) — Court of Appeals — Supreme Court
Intra-union and inter-union conflicts, and all disputes, grievances or problems arising from or affecting labor-management relations except implementation or interpretation of collective bargaining agreements (226)	Med-Arbiter of Bureau of Labor Relations in Regional Offices of DOLE (226)	Secretary of Labor And Employment — Court of Appeals — Supreme Court

NATURE OF DISPUTE	WHERE COMPLAINT FILED - INITIAL ADJUDICATION	FLOW OF APPEALS
Petition for Certification Elections (232 and 259)	Med-Arbiter of Bureau of Labor Relations in Regional Offices of DOLE (232)	Secretary of Labor ——— Court of Appeals ——— Supreme Court And Employment (259)
Unresolved grievances arising from interpretation or implementation of collective bargaining agreement and those arising from the interpretation or enforcement of company personnel policies and violations of collective bargaining agreement which are not flagrant and/or malicious refusal to comply with the economic provisions of collective bargaining agreement. (261)	Original and Exclusive Jurisdiction of Voluntary Arbitrator or Panel of Voluntary Arbitrators (261)	Court of Appeals ——— Supreme Court
All other labor disputes including unfair labor practices and bargaining deadlocks.	Voluntary Arbitrator or Panel of Voluntary Arbitrators. By agreement of the parties (262)	Court of Appeals ——— Supreme Court
Disputes in industries indispensable to National interest. (263(g))	Compulsory Arbitration by: President of the Philippines <u>or</u> Secretary of Labor and Employment <u>or</u> National Relations Commission if certified by Secretary of Labor and Employment for Compulsory Arbitration (263(g))	Court of Appeals ——— Supreme Court
Disputes where notice of intent to declare strike or lockout is filed	No adjudicatory powers. National Conciliation and Mediation Board (NCMB) will conciliate or mediate the dispute or recommend voluntary arbitration. (Sec. 22, EO No. 251, July 25, 1987)	

**LABOR DISPUTE SETTLEMENT IN THE PUBLIC SECTOR –
TERMS AND CONDITIONS OF EMPLOYMENT IN THE GOVERNMENT SERVICE
(EXECUTIVE ORDER NO. 180, (June 1, 1997))**

NATURE OF DISPUTE	SETTLEMENT OF PROCEDURE	FLOW OF APPEALS
Disputes arising out of Executive Order No. 180, June 1, 1997, Providing Guidelines for the Exercise of the Right to Organize of Government Employees etc. (Sec. 16, E.O. No. 180))	Parties will settle in accordance with applicable Civil Service Law and procedure. Refer unresolved dispute to Public Sector Labor Management Council. (Sec. 15, E.O. No. 180)	Court of Appeals ———— Supreme Court

**SETTLEMENT OF WORKMEN’S COMPENSATION CLAIMS-
EMPLOYEES COMPENSATION AND STATE INSURANCE FUND
BOOK IV, P.D. NO. 442 AS AMENDED.
LABOR CODE OF THE PHILIPPINES**

NATURE OF DISPUTE	SETTLEMENT PROCEDURE	FLOW OF APPEALS
Coverage, entitlement of benefits, collection and payment of contributions. (180)	Original and exclusive jurisdiction Social Security System 180 (for employees-employers in the private sector) (180) Government Service Insurance System (for employees-employers in the Government or public sector (180)	Employees ———— Supreme Court Compensation Commission (180) Sec. 9, B.P. 129

**SETTLEMENT OF CLAIMS – SOCIAL SECURITY
LAW OF 1997, R.A. NO. 8282**

NATURE OF DISPUTE	COMPLAINT FILED WITH – AGENCY	FLOW OF APPEALS
Coverage, benefits, contributions, and penalties and other matter	Social Security Commission (Sec. 3 and 5(a))	Court of Appeals ————— Supreme Court on Law and Facts on Law only (Sec. 5Cc) (Sec. 5(c))

**SETTLEMENT OF CLAIMS-
REVISED GOVERNMENT SERVICE INSURANCE
ACT OF 1997, R.A. NO. 8291**

NATURE OF DISPUTE	COMPLAINT FILED WITH – AGENCY	FLOW OF APPEALS
Any dispute arising under the Government Service Insurance System Act of 1997 (Sec. 30, R.A. No. 8291)	Board of Trustees of the Government Service Insurance System (Secs. 3, and 30, R.A. No. 8291)	Court of Appeals ————— Supreme Court (Sec. 31, R.A. No. 8291, (Sec. 31, R.A. No. 829, Rules 43, Rules of Court) Rule 45, Rules of Court)